IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.701 OF 2002

The Municipal Corporation of Greater Mumbai & Ors .. Appellants

versus

Mr. Gurudev Singh Sardarsingh Bhandechha & Another. .. Respondents

...

Ms. Geeta Joglekar with Mr S.J. Billimoria for appellant

Mr. O.P. Singh for respondent no.1

CORAM : D.G. KARNIK, J

DATED : 17th October, 2006

P.C.:

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 25th June,2002 passed by the city civil court under Order 39 Rule 2A of the Code of Civil Procedure in contempt notice of motion no.4037 of 2001 directing the appellant municipal corporation to reconstruct the suit premises admeasuring 12 ft. X 15 ft. in Survey No.14, Hissa no.5 (part), C.T.S. No.4/4 (part), AG Link Road, near Ensar Blade company, Sakinaka, Mumbai-72.

3. The respondents were occupying a structure admeasuring about 12ft. X 15 ft. with B.M. walls and A.C sheet roof at or near Link Road, near Ensar Blade Company Sakinaka, Mumbai-72. There is some dispute between the parties as to whether the said structure was situated at the public road or private property. On 12th May, 1983 the appellant municipal corporation issued a notice purporting to be a notice under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short 'the M.M.C. Act') to the respondents, to show cause why the structure which was alleged to be erected unauthorisedly be not removed or pulled down. By a reply dated 25th May,1993 the respondents replied that the structure was old and they had purchased the shop

from one Noor Mohammed Usman Gani and had only carried out some essential repairs which did not require any permission. It was further contended that the structure was assessed to the municipal taxes and they were holding a licence issued under the Shops & Establishments Act. They therefore submitted that the notice dated 12th May, 1983 issued under Section 351 of the Act should be dropped and cancelled. It appears that no order was passed by the appellants after the reply by the respondents dated 25th May, 1983. The respondents however apprehended that without any order and further notice the appellants were likely to take action against them and therefore they filed the suit bearing L.C. Suit No.5301 of 1986 in the city civil court at Mumbai for a declaration that the notice dated 12th May, 1983 was illegal and invalid and for an injunction restraining the appellants and their servants and agents from demolishing the suit structure, which according to them was standing on the land bearing survey no.14, hissa no.5 (part) C.T.S. No.4/4 (part) falling on Ghatkopar Link Road near Ensar Blade Company , Sakinaka, Mumbai-72. In the said suit the respondents took out a motion no.4359 of 1986 for an injunction. On 4th September, 1986 the city civil court granted ad interim injunction restraining the

appellants from demolishing the suit structure pursuant to the notice dated 12th May, 1983. It appears that when the motion came up for hearing the court found that the appellants had not passed any order on the reply of the respondents dated 25th May, 1983 to the notice dated 12th May, 1983 issued under Section 353 of the Act. Therefore by the order dated 16th October, 1992 the city civil court directed the respondents to file fresh reply (to the notice dated 12th May, 1983) within four weeks and directed the deputy municipal commissioner to hear the respondents and their advocates and communicate the order and till then and for a period of two weeks thereafter the ad interim order would continue. According to the respondents, they filed a further reply to the show cause notice on 12th November, 1992, but no order was passed by the deputy municipal commissioner thereon and therefore the injunction granted by the city civil court on 16th October, 1992 continued to remain in force. Thereafter instead of passing any order on the reply filed by the respondents, the appellants chose to issue a fresh notice purportingly under section 314 of the M.M.C. Act on 31st January, 2000 alleging therein that the respondents' structure was on the public road. By a reply dated 14th February, 2001 the respondents replied

that their structure was not on the public road. They further pointed out that previously a notice dated 12th May, 1983 was issued in respect of the very structure and the respondents had filed suit bearing no.5301 of 1986 which was still pending and posted for hearing on 27th February, 2001. They further pointed out that in the notice of motion no.4359 of 1986 taken out in the said suit, the court had restrained the appellants from enforcing the notice and from demolishing the suit structure and therefore the appellants were not entitled to demolish the same. According to the respondents, no order was passed by the appellants after considering the reply dated 14th February, 2001. Instead, on 30th April 2001, the appellants along with their officers and team of workers demolished the respondents' structure by bulldozers. Respondents therefore filed the contempt motion no.4037 of 2001 for taking action against the appellants. In the said contempt notice of motion, the respondents pleaded that the order of injunction was in force and appellants were restrained from demolishing the suit structure. However the respondents' structure was demolished illegally and while the order of injunction was in force and thereby the appellants had committed breach of the injunction order and contempt of the court. By

the order dated 25th June, 2002 the city civil court allowed the contempt notice of motion holding that injunction order was in force and appellants had demolished the respondents' structure in breach of the order of injunction. In view thereof city civil court directed the respondents no.1 to 3 to reconstruct the suit structure admeasuring 12ft. X 15 ft. in Survey no.14, Hissa no.5 (part) C.T.S. No.4/4 (part), AG Link Road, near Ensar Blade Company, Sakinaka, Mumbai-72. That order is impugned in this appeal.

4. It must be noted that the appellants had first issued a notice purporting to be the notice under Section 351 of the M.M.C. Act on 12th May, 1983. By a reply dated 25th May, 1983 the respondents contended that the structure was very old and respondents had only carried out the essential repairs. Even ignoring the assertion of the respondents that the structure was very old, it must be noted that the structure was in existence at least since May, 1983. The explanation given by the respondents by their reply dated 25th May, 1983 appears to have been accepted as the appellant chose not to take any action in pursuance of the notice dated 12th May, 1983. It is for the first time in the year 1986 that the respondents apprehended that the

appellant municipal corporation was likely to demolish their structure without any notice and without considering their reply dated 25th May, 1983. The respondents therefore, filed a suit bearing L.C. Suit No.5301 of 1986 for an injunction restraining the appellant from demolishing the structure. In the said suit a motion, bearing N.M. No.4359 of 1986 was taken out by the respondents. The Court gave respondents liberty to file a fresh reply within four weeks and directed the deputy municipal commissioner to hear the respondents and pass a speaking order. Till the speaking order was passed and for a period of two weeks thereafter the appellant was restrained from demolishing the suit structure. The reply filed by the respondents was never decided and therefore the order of injunction continued to remain in force. Despite the order of injunction being in force the appellants issued a notice dated 31st January 2000 stating that they had undertaken the removal of unauthorized constructions at GA Link Road, near Sakinaka Junction, and the respondents' structure would be removed. Immediately on receipt of the notice the respondents by their reply dated 14th February, 2001 brought to the notice of the appellant that an order of injunction passed by the city civil court in was in force and the

suit was posted for hearing on 27th February, 2001. The respondents therefore warned the appellants not to take any action and not to commit breach of the order of injunction. Despite the knowledge of injunction and despite it being brought to their notice again by the reply dated 14th February, 2001 the appellants chose to demolish the respondents structure. This was a high handed action on the part of the appellants. They not only were aware of the order of the court which was passed on 16th October, 1992, but they were specifically informed about the existence of the order by the respondents by their letter dated 14th February, 2001. In the circumstances their action of demolishing the suit property on 30th April, 2001 was in complete disregard of the order of injunction passed by the city civil court.

5. Learned counsel for the appellants however contended that the contempt notice of motion no.4037 of 2001 was taken out by the respondents under Order 39 Rule 2A of the Code of Civil Procedure and therefore all that the court could have done was to order attachment of the property and/or direct detention of the persons committing breach of the order in the civil prison but could not have passed an order for

reconstruction of the structure. In my view the trial court should have ordered punishment of the concerned officers of the municipal corporation by detention in civil prison. It has shown mercy to them who, in my view, deserve no mercy but strict punishment. The court has been lenient and has only ordered re-construction of suit structure. In my view, the reconstruction has been ordered to restore the status quo ante which was in existence on the date of the order of an injunction. When a person commits a breach of the order of court, the court is not powerless to direct restoration of status quo ante and to recover cost of restoration from the guilty. the court has exactly done that.

6. Before me, learned counsel for the appellants submitted that the order is too harsh. It is against public interest inasmuch as structure which is unauthorised would be re-erected. Secondly the expenses of constructions are to be born by the appellants. The argument is based on the assumption that the structure was illegal. It is yet to be decided in the suit whether the structure was unauthorized. In fact the court had directed the appellants to decide that issue after considering the

reply of the respondents wherein they had contended that the structure was very old and they had not erected it but had only carried out the essential repairs. In the circumstances it would be inappropriate, without evidence, to record any finding as to the legality or illegality of the structure, which is yet to be determined in accordance with law.

7. Suffice it to say, the order of injunction was in force which was breached by the appellants. In the circumstances the trial court committed no error in directing reconstruction to restore the status quo ante. For these reasons there is no merit in the appeal, which is hereby dismissed with costs.

(D.G. KARNIK, J.)